

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a “significant energy action” as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

#### *I. National Technology Transfer and Advancement Act*

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this proposed rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority

populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this rule?

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, Tribal or local governments, this rule will neither increase nor decrease environmental protection.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 8, 2011.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 635**

**RIN 0648–BA17.e**

#### **Atlantic Highly Migratory Species; Atlantic Shark Management Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of Intent; control date for Atlantic shark landings; request for comments.

**SUMMARY:** This notice announces the National Marine Fisheries Service’s (NMFS) intent to prepare an EIS and FMP Amendment that would consider catch shares for the Atlantic shark fisheries. NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) on September 20, 2010, that provided background information and requested public comment on potential

adjustments to the regulations governing the U.S. Atlantic shark fisheries to address several specific issues currently affecting management of the shark fisheries and to identify specific goals for management of the fisheries in the future. NMFS received comments on a variety of modifications to the existing management structure for the Atlantic shark fisheries, including programs such as catch shares, limited access privilege programs (LAPPs), individual fishing quotas (IFQs), and/or sectors. The purpose of this Notice of Intent (NOI) is to establish a control date for eligibility to participate in an Atlantic shark catch share program, announce the availability of a white paper describing design elements of catch share programs in general and issues specific to the Atlantic shark fisheries, announce a catch share workshop at the upcoming HMS Advisory Panel meeting, and request public comment on the implementation of catch shares in the Atlantic shark fisheries.

**DATES:** Written comments regarding the issues in this NOI must be received no later than 5 p.m. on March 1, 2012.

Topics included in this NOI will be discussed on September 22, 2011, at the Highly Migratory Species (HMS) Advisory Panel (AP). Additional workshops will be announced in a subsequent notice in the **Federal Register**. Please see the **SUPPLEMENTARY INFORMATION** section of this NOI for more specifics regarding the HMS Advisory Panel meeting.

**ADDRESSES:** The workshop at the HMS Advisory Panel will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. You may submit comments, identified by “0648–BA17”, by any one of the following methods:

- **Electronic submissions:** Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- **Fax:** 301–713–1917, Attn: Margo Schulze-Haugen.

- **Mail:** NMFS SF1, 1315 East-West Highway, Silver Spring, MD 20910.

**Instructions:** All comments received are part of the public record and generally will be posted to portal <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft

Word, Excel, WordPerfect, or Adobe PDF file formats only.

Related documents, including the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its amendments and the 2010 Stock Assessment and Fishery Evaluation (SAFE) Report are available upon request at the mailing address noted above or on the HMS Management Division's Web page at: <http://www.nmfs.noaa.gov/sfa/hms/>.

**FOR FURTHER INFORMATION CONTACT:**

Karyl Brewster-Geisz, LeAnn Southward Hogan, Guý DuBeck, or Michael Clark at 301-427-8503 or fax at 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). In 1999, NMFS revised the 1993 Shark FMP and included swordfish and tunas in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP was amended in 2003, and in 2006, NMFS consolidated the 1999 FMP and its amendments—and the Atlantic Billfish FMP and its amendments—into the 2006 Consolidated Atlantic HMS FMP. The 2006 Consolidated HMS FMP was amended in 2008 and 2010 to address management needs in the Atlantic shark fisheries.

As outlined in the September 20, 2010, ANPR (75 FR 57235), sharks have been federally managed since 1993. Since that time, there have been numerous changes to the regulations and major rules related to sharks, either through FMP amendments or regulatory amendments, in order to respond to results of stock assessments, changes in stock status, and other fishery fluctuations. Despite these modifications, the Atlantic shark fisheries, particularly the large coastal shark (LCS) portion, has experienced problems such as commercial landings that exceed the quotas, declining numbers of fishing permits since limited access was implemented, complex regulations, “derby” fishing conditions due to small quotas and short seasons, increasing numbers of regulatory discards, and declining market prices. The objective of the ANPR was to describe and seek public comment on alternative management strategies that might better address these issues in the Atlantic shark fisheries.

Comments were sought on several themes that would affect management of the shark fisheries and to identify goals for future actions. The themes presented in the ANPR included: quota structure, permit structure, and catch shares. Six

public meetings were held which included one at the Atlantic HMS AP meeting in Silver Spring, MD on September 21–23, 2010. NMFS received comments on a variety of possible modifications to the existing management structure for Atlantic sharks. The public commented that changes in quota structure addressed issues associated with species complexes/quotas, regions, and retention limits, while comments on changes in the permit structure addressed issues associated with permit stacking and “use it or lose it” permits. NMFS received comments from environmental groups that supported our initiative to address a number of serious problems facing shark populations in the Atlantic Ocean and Gulf of Mexico. NMFS also received comments about concerns for better tracking of landings and mortality of sharks by recreational fishermen. Comments in support of and opposed to catch shares were received in addition to comments on methods for determining individuals' initial allocation if catch shares were implemented for the Atlantic shark fisheries. A summary of all the comments received can be obtained from HMS Management Division Web site (<http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm>).

Furthermore, NMFS received a proposal from regional stakeholders to implement a catch share program for the Atlantic shark fisheries, particularly the LCS portion, in the Gulf of Mexico (GOM). These fishermen would prefer to replace the current management structure for LCS with an individual fishing quota (IFQ) program. The regional stakeholders continue to hold deliberations related to this IFQ proposal and some of the details have yet to be finalized. Regional stakeholders have expressed that they would like this IFQ program to be integrated into existing catch share programs in the GOM for reef fish (*i.e.*, red snapper, red grouper, and tilefish) and employ some of the same infrastructure for monitoring and reporting as well as some of the same design and management elements associated with these Council-designed catch share programs in the GOM. The proposal would include non-sandbar LCS, sandbar sharks, and small coastal sharks (SCS). Under the industry proposal, the eligible participants in the IFQ program would include all fishermen with a valid federal directed or incidental limited access shark permit and state-water fishermen, and the initial share of the IFQ program

would be distributed to current Federal directed and incidental permit holders based on their catch history in logbooks from 2002–2009. The allocation for the state-water fishermen would be based on dealer landings from the same qualifying years as the Federal permit holders. In the industry-proposed IFQ program, state-water permit holders would fish under an established state quota and be managed under state-specific rules. The qualifying years for initial allocation for each species has multiple options in the proposal. The non-sandbar LCS allocation would be based on a variety of number of years during a time period of 2002–2011. Participants would be able to select the best number of years out of the total number of qualifying years. For example, if the qualifying years were 2002–2009, then participants would be able to select the best 5 out of the 8 years for their allocation. The proposal would also establish an allocation for sandbar sharks in order to allow a sandbar shark allocation that can be easily and quickly incorporated into the IFQ program once the species is rebuilt. The stakeholders are considering that the qualifying years for this allocation would be 2002–2007 or 2005–2007. SCS were also included in the proposal, but the qualifying years for allocation have yet to be proposed. The other details of the IFQ proposal, including duration of the program, transferability, IFQ share caps, IFQ allocation caps, and cost recovery fees are consistent with the existing GOM IFQ programs (red snapper, grouper, and tilefish). Additional details on the proposal received from GOM participants for the Atlantic shark fisheries can be found on the HMS Management Division Web site (<http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm>).

In light of the comments received on the ANPR concerning catch shares and the more specific interest in a catch share program for Atlantic Sharks in the GOM submitted by regional stakeholders, NMFS is considering implementation of catch shares for the Atlantic shark fisheries. Consistent with the objectives described in the ANPR on the Future of the Atlantic Shark Fishery, written comments, and comments at public hearings and Advisory Panel meetings, implementing a catch share program for the Atlantic shark fisheries may be an effective means of lengthening seasons and providing participants more autonomy concerning timing of fishing activities, reducing regulatory discards, improving economic performance by allowing fishermen the opportunity to harvest

sharks when conditions are most favorable, addressing intraregional differences in shark distribution that may lead to difficulty timing seasons when sharks are locally available, reducing latent effort in the fishery, reducing bycatch, simplifying regulations, and ensuring that overfishing does not occur to maintain target rebuilding timeframes for sharks.

NMFS has prepared a white paper that provides more detail concerning some of the potential design elements for catch share programs and provides the public with additional information regarding some of the issues in the Atlantic shark fisheries that NMFS is interested in obtaining feedback on, including, but not limited to: eligibility (directed and/or incidental permit holders), specification of the resource unit (species and regions to include), initial allocation (based on catch history and/or other means), and catch share management. The white paper is available on the HMS Management Division Web site (<http://www.nmfs.noaa.gov/sfa/hms/sharks/catchshares.htm>). Implementation of any program to restrict access in the Atlantic shark fisheries would also

require preparation of an amendment to the 2006 Consolidated HMS FMP, which would include the NOI and white paper for public comment during the scoping period, a predraft of FMP amendment outlining options for consideration, a proposed rule and draft environmental impact statement that analyzes alternatives for design and management of a catch share program and identifies the Agency's preferred alternatives, and issuance of a final implementing rule.

#### **Control Date**

NMFS is establishing September 16, 2011, as a control date. If NMFS takes future action to implement catch shares in the Atlantic shark fisheries, the control date would affect eligibility to participate in and receive an initial allocation of quota in the Atlantic shark fisheries. Unless NMFS changes the control date in the future, to be eligible for the Atlantic shark fisheries catch share program, participants must be in possession of a valid federal directed or incidental limited access shark permit on September 16, 2011. The Agency may or may not make use of this control date as part of the qualifying criteria for participation in any future catch share

or other management program. Fishermen are not guaranteed future participation in a fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration.

#### **Requests for Landings History**

Through the proposed rulemaking process, NMFS will consider, among other things, methods of determining initial allocations. At this time, to reduce duplicate work and minimize confusion, NMFS is requesting that permit holders not submit data requests for their logbook landings history. There will be ample opportunity for all permit holders to review the landings data that NMFS has on file, the Agency will provide detailed information on a process for petitioning any discrepancies at a future date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 13, 2011.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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